NOTES OF CASES.

Carriers—Status of Person Entering Sleeping Car Only to Use Lavatory.—In Payne *v.* Shearer, 270 Fed. 572, the U. S. Circuit Court of Appeals for the Fifth Circuit held that a passenger in an ordinary coach who entered a lavatory in a sleeping car with the conductor's consent solely for the purpose of using the lavatory, did not become thereby a passenger of the sleeping car company, since she was not seeking transportation in the sleeping car.

The court said in part:

"Unless plaintiff was a passenger, she has no case. While the question whether, as a matter of law, the relation of carrier and passenger exists, is often a difficult one, and in many cases is one of mixed law and fact, nevertheless such relation does not exist, if neither party intended to create it. Sleeping car companies are engaged in the business of transportation of passengers. The dressing rooms, lavatories, and other conveniences and facilities contained in the cars which they furnish are incidental to their business of transportation, and are provided exclusively for the use of those who become their passengers. One who enters a sleeping car for the sole purpose of making use of these conveniences and facilities does not thereby become a passenger. Plaintiff and her companions were not seeking passage or transportation; they did not enter the sleeping car with the intention of riding from one station to another, or for any particular length of time, or for the purpose of riding at all. The use of the dressing room was the principal thing with them, and riding in the sleeping car was a mere incident. It would have suited their purpose just as well if the train had been standing still at a station. The plaintiff was not in a situation similar to one who, without a ticket, enters a sleeping car, intending to pay if required to do so. She had obtained the consent of the conductor before she entered the car, and, according to her own testimony, she did not enter with the intention of paying for the privilege of riding in the sleeping car, or for that purpose. We are of opinon, therefore, that the trial court erred in refusing to direct a verdict in favor of defendant. The cases of Williams *v.* Pullman Palace Car Co., 40 La. Ann. 87, 3 So. 631, 8 Am. St. Rep. 512 and Cassedy *v.* Pullman Palace Car Co. (Miss.), 17 So. 373, cited by counsel for defendant sustain this view."

Contempt—Assaulting Judge During Recess of Court.—In Weldon *v.* State, 234 S. W. 466, it was held that where defendant in a criminal proceeding, during a recess, and at a place where court could not be legally held, assaulted the judge to influence, intimidate, and control his action in resetting the case for trial when the judge resumed the bench, defendant in making the assault was in the constructive presence of the court so as to render him guilty of contempt.

The court said in part:

"It is true that the incident complained of did not occur on the day when the Garland circuit court was in session (Light *v.* Self, 138 Ark. 221, 211 S. W. 369, 214 S. W. 746), although it did occur before the adjournment of the court for the term. It is also true that the incident occurred at a place where court could not be legally held. Mell *v.* State, 133 Ark. 197, 202 S. W. 33, L. R. A. 1918D, 480.

"A similar contention was made in the case of Turk and Wallen *v.* State, 123 Ark. 341, 185 S. W. 472. There Turk and Wallen were never shown to have been at any time in the actual presence of the court. On the contrary, it affirmatively appears that the conduct complained of, to wit, the intimidation of a litigant from appearing in court and prosecuting his suit there pending, was committed 'before reaching the courthouse.' It was there insisted that as the offense with which Turk and Wallen were charged 'was not committed in the presence or hearing of the court, and was not in disobedience of any process of the court, that its power to punish was exceeded in the fine and imprisonment assessed,' inasmuch as section 1485, C. & M. Digest (section 721, Kirby's Digest), provides that punishment for contempts not so committed 'shall in no case exceed the sum of $50.00 nor the imprisonment ten days.'

"Answering this insistence, Mr. Justice Kirby, for the court, said:

" 'It is universally held that intimidating a witness and preventing his appearance at court, or procuring him to absent himself from the trial, is a contempt of court. Preventing the appearance of a litigant in court, for the prosecution of a suit brought to enforce a right, by intimidation and threats, is such an obstruction of judicial procedure as renders absolutely worthless all process of the court, which is instituted for the enforcement and protection of the rights and the redress and prevention of wrongs of the litigants. It destroys the dignity and power of the court and brings the administration of justice into dispute.

" 'Here a citizen appealed to the court for the redress of an alleged wrong only to find himself confronted by the wrongdoer and his associate on the day set for the trial, at the door of the court, and so intimidated with threats that he found it necessary to absent himself from the court of justice to which he had appealed, and abandon the prosecution of his cause of action through fear.

" 'The conduct of appellants was a flagrant offense against the dignity and power of the court, whose arm is long enough and strong enough to keep open and unobstructed the way to its door to all who must invoke its authority, which is not limited in the right to punish offenses of this kind except by the infliction of such punishment as is commensurate with the enormity of the offense and calculated to preserve and uphold the dignity and honor of the court and its respect in the confidence of the people. Ford *v.* State, 69 Ark. 550. The court had jurisdiction to hear the proceeding and did not exceed its authority in the assessment of the punishment.'

"If full faith and credit is given to that opinion, we think it must necessarily follow that petitioner is as guilty of contempt as were Turk and Wallen.

"If intimidating a witness and preventing his appearance at court is a contempt, if preventing the appearance of a litigant in court is such an obstruction of judicial procedure as constitutes contempt, why is it not contempt to be guilty of improper conduct designed and intended to influence and control the action of the court itself? The reasoning of Mr. Justice Scott in the case of Neel *v.* State, supra, is applicable here. He said: 'When, therefore, the common law deemed it so necessary, for this great purpose, to protect the juror, the witness, the informer, the party, the jailer, the attorney, and other persons, many of whom might never again be called into a court of justice, it was not to be expected that it would fail to cover with its complete armor the presiding minister of the law's majesty, who would be so often exposed to similar trials. Not that any higher personal privileges were arrogated for him than for the humblest of these, but because it was obvious that the principle which suggested the protection of these would, at least to the same extent, protect him, if it did not rise with the grade of the officer, and the majesty of the law be more degraded in the person of a higher than a lower officer, intrusted with its administration.' In offering actual physical violence to the person of the judge, petitioner was in the constructive presence of the court, for he sought thus to influence, intimidate, and control the action of the judge in the matter of resetting his case for trial when the judge had again resumed the bench. In the case of Stuart *v.* People, 4 Ill. 395, the supreme court of Illinois said that in the class of constructive contempts would necessarily be included all acts calculated to impede, embarrass, or obstruct the court in the administration of justice, and that such acts would be considered as done in the presence of the court. See also People *v.* Wilson, 64 Ill. 196, 16 Am. Rep. 528, 1 Am. Crim. Rep. 107; Ex parte McCowan, 139 N. C. 95, 2 L. R. A. (N. S.) 603, 51 S. E. 957; McCarthy *v.* Hugo, 82 Conn. 262, 135 Am. St. Rep. 270, 73 Atl. 778, 17 Ann. Cas. 219, and the notes thereto, in which cases supporting and opposing the view that acts impeding the administration of justice will be held to be within the constructive presence of the court will be found."

Damages—Recovery for Second Accident Aggravating Personal Injury.—In Wagner *v.* Mittendorf, 232 N. Y. 481, 134 N. E. 539, the Court of Appeals of New York held that if a person is injured and proceeds in accordance with his doctor's instructions, and another accident happens to him which results in aggravating his injury, without negligence on his part, the additional injury may be added to the original injury and damages be recovered for all of the injury.

The court said in part:

"In Lyons *v.* Erie Ry. Co., 57 N. Y. 489, the defendant objected to